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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,437	05/02/2008	Jean-Pierre Giraud	62357.022906	9607

32361 7590 10/15/2010  
GREENBERG TRAURIG, LLP  
MET LIFE BUILDING  
200 PARK AVENUE  
NEW YORK, NY 10166

EXAMINER
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RANDALL, JR., KELVIN L

ART UNIT	PAPER NUMBER
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3651

NOTIFICATION DATE	DELIVERY MODE
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10/15/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

SchindlerB@gtlaw.com  
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NYIPmail@gtlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,437	<b>Applicant(s)</b> GIRAUD, JEAN-PIERRE	
	<b>Examiner</b> Kelvin L. Randall, JR.	<b>Art Unit</b> 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07/28/2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 and 8 is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see pages 8-11, filed 07/28/2010, with respect to claims 1-13 have been fully considered and are persuasive. The Non-Final Rejection of 04/28/2010 has been withdrawn.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

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be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-6 and 9-13 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 7,243,817. Although the conflicting claims are not identical, they are not patentably distinct from each other because one of ordinary skill in the art upon viewing of the claims as stated in US 7,243,817 B2 would have been motivated to create an embodiment as described in that of the current application to a point where the resulting invention would have been identical to that of the current disclosure.

Application 10/595437	US 7,243,817 B2
Claims 1, 10, 11, 12, and 13: A tablet dispenser for dispensing individual solid objects comprising a lower housing, an upper housing with an elastomeric cover that covers at least a portion of a trigger mechanism, a elastomeric cover of at least a portion of the lower housing and a dispenser mechanism that is dimensioned to fit within the housings, the dispenser mechanism has a container region and a dispenser zone, the dispenser mechanism has a spring element and a lever mechanism pivotally mounted in the dispensing zone, an interior of the lower housing is provided with a pusher bar which extends from a fore wall of the lower	Claim 1: A tablet dispenser for dispensing individual solid objects, comprising: a lower housing, an upper housing with an upper elastomeric cover that covers at least a portion of a trigger mechanism, a lower elastomeric cover of at least a portion of the lower housing and a dispenser mechanism that is dimensioned to fit within the housings, the dispenser mechanism has a container region and a dispenser zone, the dispenser mechanism has a spring element and a lever mechanism pivotally mounted in the dispensing zone, an interior of the lower housing is provided with a pusher bar which extends from a fore wall of the lower

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<p>housing back towards an upward extending leg of the lever mechanism, the pusher bar, upward extending leg and a hook element are configured so that the pusher bar is not in contact with the upward extending leg and the extending leg is set back from an opening situated on a fore wall of the lower housing and a hook element of the lever mechanism extends into the dispenser zone blocking tablets from being dispensed through the opening when the dispenser mechanism is at rest but, at the same time, when sufficient force is applied to the elastomeric cover, the dispenser mechanism moves forward, towards the fore wall of the lower housing and the upward extending leg of the lever mechanism contacts the pusher bar, as the upward extending leg pivots in the direction opposite the direction in which the dispenser mechanism is moving, the hook element of the lever mechanism pivots in the opposite direction of the upward extending leg and thus removing the impediment prohibiting the tablet from passing through the opening of the dispensing mechanism.</p>	<p>housing back towards an upward extending leg of the lever mechanism, the pusher bar, the upward extending leg and a hook element of the lever mechanism are configured so that the pusher bar is not in contact with the upward extending leg and the upward extending leg is set back from an opening situated on the fore wall of the lower housing and the hook element of the lever mechanism extends into the dispenser zone blocking tablets from being dispensed through the opening when the dispenser mechanism is at rest but, when sufficient force is applied to the upper elastomeric cover, the dispenser mechanism moves forward, towards the fore wall of the lower housing and the upward extending leg of the lever mechanism contacts the pusher bar, as the upward extending leg pivots in the direction opposite the direction in which the dispenser mechanism is moving, the hook element of the lever mechanism also pivots to remove the impediment prohibiting the tablet from passing through the opening of the dispensing mechanism; wherein the lower elastomeric cover comprises a lip seal, wherein the lip seal is formed by two flexible lip sides that converge at a thin slit, wherein the lip seal allows a tablet to pass therethrough, and wherein the lip seal forms a substantially moisture tight container.</p>
<p>Claims 2, 4, and 9: wherein a lip seal cover the opening in the lower housing and the lip seal is configured so that the upward extending leg opens a slit in the lip seal to allow a tablet to pass therethrough, the lip seal forms a substantially moisture tight container.</p>	<p>See Claim 1</p>
<p>Claim 3: wherein the elastomeric cover is</p>	<p>Claim 3: wherein the elastomeric cover is</p>

<p>provided with a button that extends into an opening of the upper housing, the button and the opening form an interference fit with prongs so that, when the force is removed from the elastomeric cover, the cover returns to its original shape, and pulls the dispenser mechanism back to its original position within the housing.</p>	<p>provided with a button that extends into an opening of the upper housing, the button and the opening form an interference fit with prongs so that, when the force is removed from the elastomeric cover, the upper elastomeric cover returns to its original shape, and pulls the dispenser mechanism back to its original position within the housing.</p>
<p>Claims 5 and 6: A tablet dispenser for dispensing individual solid objects comprising a lower housing, an upper housing with a trigger mechanism, a dispenser mechanism that is dimensioned to fit within the housings, the dispenser mechanism has a container region and a dispenser zone, the dispenser mechanism has a spring element and a lever mechanism pivotally mounted in the dispensing zone, an interior of the lower housing is provided with a pusher bar which extends from a fore wall of the lower housing back towards an upward extending leg of the lever mechanism, the pusher bar, upward extending leg and a hook element are configured so that the pusher bar is not in contact with the upward extending leg and the extending leg is set back from an opening situated on a fore wall of the lower housing and the hook element of the lever mechanism extends into the dispenser zone blocking tablets from being dispensed through the opening when the dispenser mechanism is at rest but, at the same time, when sufficient force is applied to the trigger mechanism, the dispenser mechanism moves forward, towards the fore wall of the lower housing and the upward extending leg of the lever mechanism contacts the pusher bar, as the upward extending leg pivots in the</p>	<p>See Claim 1</p>

direction opposite the direction in which the dispenser mechanism is moving, the hook element of the lever mechanism pivots in the opposite direction of the upward extending leg and thus removing the impediment prohibiting the tablet from passing through the opening of the dispensing mechanism.	
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***Allowable Subject Matter***

4. Claims 7 and 8 are allowed.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelvin L. Randall, JR. whose telephone number is (571)270-5373. The examiner can normally be reached on Monday-Friday 8:30 AM to 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571)272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gene Crawford/  
Supervisory Patent Examiner, Art  
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/K. L. R./  
Examiner, Art Unit 3651